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SUBJECT: UPCOMING BY-ELECTION ON KENYA'S COAST

REF: NAIROBI 1792

¶1. Summary: The Magarini by-election features ten contending parties. The putative incumbent, whose seat was vacated by a court order finding his election in 2002 fraudulent, represents a Coast Province party that advocates decentralization and favored treatment of "indigenous" residents over those hailing from elsewhere in Kenya. He is backed by the pro-government NARC-Kenya party, which declined to run a candidate against him. He is likely to win. The U.S. Mission will field an observation team well-briefed on the abuses that marred the July 2006 by-elections. End Summary.

¶2. The Electoral Commission of Kenya (ECK) is organizing a by-election on 14 May for the parliamentary seat in the Magarini constituency in Kenya's Coast Province. The by-election results from a court challenge to the December 2002 election of Harrison Kombe of the Shirikisho party of Kenya. Nearly four and a half years into Kombe's five year tenure as a Member of Parliament (MP), the courts determined that his election was so marred by fraud committed by his supporters that the seat must be recontested. However, the court did not hold him personally responsible for electoral malfeasance or otherwise disqualify him from recontesting. Since the general election is expected in December 2007, the victor of the 14 May by-election will be in office less than seven months before the seat is again contested. Constituency voters complain that the courts moved too slowly on the fraud case and that a by-election so soon before a general election is a pointless expense. However, the by-election is required under present electoral law.

#### Portrait of Magarini Constituency

¶3. Magarini constituency is located along the coast north of Malindi and south of the mouth of the Tana river. It is overwhelmingly populated by the Giriama clan of the Mijikenda people. (The Mijikenda, like the Luhya and the Kalenjin, are a collection of very loosely affiliated ethnic communities. They are not a homogenous group like the Kikuyu or the Luo.) Traditional religious beliefs are quite strong among the Giriama, although many at least nominally identify with Christianity. The small town of Mambrui, just over the constituency border from Malindi, has a mostly Muslim and non-Giriama population. Most political parties contesting the by-election have their constituency headquarters in centrally-located Gongoni town. There are about 42,000 registered voters in the constituency.

#### The Nine Contenders

¶4. Nine political parties have registered with ECK to contest the parliamentary seat. They are:

-- Shirikisho Party of Kenya (SPK). Harrison Kombe will seek to retain his seat, which is SPK's sole seat in parliament. SPK is a coastal party advocating decentralization,

especially local election of provincial and district commissioners rather than their appointment by the central government. "Shirikisho" means "federation" in ki-Swahili. But SPK goes beyond mere decentralization to advocate "majimboism," an independence era ideology that seeks to restrict access to land, government jobs and even residency to those indigenous to the region. Kenyans from outside the coast would require residency permits (internal visas) to reside within the province. In fact, SPK supporters told PolCouns that they would prefer keeping non-Giriama fellow coastals out of their constituency as well. All of this would require drastic changes to Kenyan law and the country's constitution. While Kenya has its share of ethnic xenophobes throughout the country, we do not sense that there is significant support for SPK's program outside its Giriama base. Much of the rhetoric of SPK supporters is specifically anti-Kikuyu. This is ironic given that Kombe consistently supported Kibaki's Kikuyu-dominated government during his time in parliament. Kibaki's supporters in the NARC-Kenya leadership returned the favor by opting not to contest the constituency despite having on hand a very popular local candidate (see below). Most observers of Coast Province politics favor Kombe to win the constituency, but coast politics are unusually fluid this year so his election is far from assured. Still, he has the backing of most pro-government Mijikenda leaders, although some are supporting his rival, Franco Esposito (see below). NARC-K and other pro-government luminaries are expected to campaign for him.

-- Kenya National Democratic Alliance (KENDA). Franco Esposito, a naturalized Kenyan of Italian origin and successful businessman active in the coastal tourism industry, defected from (pro-Kibaki) NARC-Kenya to KENDA once

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the leadership of NARC-Kenya instructed him to sit out the contest. While no longer a NARC-Kenya member, he continues to state that if elected he will support the Kibaki administration and Kibaki's re-election. Esposito is highly popular in the region. He has taken a Giriama name and supports many community development projects in the area. He won the NARC-Kenya caucus vote to represent the party in the by-election, and then was told to stand down in favor of SPK by Vice President Awori. NARC-Kenya has two prominent factions. One favors grassroots primary elections to determine parliamentary candidates and a strategy of building up a national party that can win national power and govern alone. The other faction prefers candidate selection by the party leadership and coalition politics. The second camp is in the ascendancy and has opted to dump the popular Esposito in favor of Kombe. KENDA was recently taken over by Kamlesh Pattni, the former Chairman of Goldenburg International, the infamous "paper company" behind a series of grand scale corruption schemes that did so much damage to the Kenyan economy in the 1990s.

-- National Rainbow Coalition (NARC). Samuel Nzai will run on behalf of the party that President Kibaki formally adheres to, but which has been abandoned by him and his supporters in favor of NARC-Kenya. NARC is headed by Health Minister Charity Ngilu, who, although a member of the government, has severely criticized her fellow ministers and publicly supports the ODM-K presidential aspirant Raila Odinga.

-- Orange Democratic Movement-Kenya (ODM-K). Amason Kingi will represent the opposition coalition party considered the greatest threat to Kibaki's re-election ambition on the national level, but not a strong player in this constituency. Still, leading ODM-K figures are likely to campaign for Kingi.

-- Six micro-parties will contest the by-election: Republican Party of Kenya, Jeremiah Kazungu (ditched ODM-K when he did not get the nomination); Safina, Jillo Onotto (ditched NARC-K when he did not get the nomination); New Democrats Party,

Peter Ziro (ditched SPK when he did not get the nomination); KADU, David Noti Kombe (similar ideology to SPK, but pro-opposition, Kombe was the former KANU MP for Magarini); Restoration Democrats Party of Kenya, Lucy Muthoni Ng'ang'a; and Kenya Patriotic Trust, Pastor James Ngala Shida.

#### Election Observation Plans

15. The U.S. Mission will field a team of observers for the by-election, including Kenyan colleagues from the region. The U.S. team will be well briefed on the electoral abuses that marred the July 2006 by-elections as well as those that occurred in Magarini in 2002. Other missions from donor countries will also field observers. The effort is coordinated by the Like-Minded Donors group comprising most of the missions resident in Nairobi that are both democratic and have substantial aid programs. Kenyan and international NGOs also plan observer missions, as does the Human Rights Commission, which documented and publicized electoral malfeasance during the July 2006 by-elections. The ECK welcomes observers and has raised no bureaucratic hurdles to their registration. Christine Karani, ECK's District Coordinator for Malindi District (including Magarini constituency) told PolCouns that she and her staff are well aware of the electoral abuses that marred the 2002 election in Magarini and are prepared to thwart attempts to repeat that history (see reftel).

#### Comment: Kenya's Democracy, a Work in Progress

16. The Magarini by-election illustrates some positive features of Kenya's democracy, as well as some "areas for improvement." The fact that the courts reversed the election of a pro-government MP based on evidence of electoral fraud is a positive development. This would not have happened under independent Kenya's two previous regimes. The fact that it took the courts four years to achieve this feat is unfortunate, but the court systems of many mature democracies are no more efficient than is Kenya's. Casual party switching and opaque party nominations indicate a continuing lack of internal democracy among Kenyan parties. Parties are typically owned by the leaders, not by the grassroots supporters. We are confident that this will improve in time as Kenyans adjust themselves to multiparty politics with considerably more democratic space than they have ever known before.

17. Coast Province, along with Western Province, is among the regions most "in play" for the December 2007 general election. Mijikenda politicians have traditionally aligned themselves with the winning national team and received a greater share of top government jobs than their numbers would

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warrant, but this time around their political loyalties are fluid and divided. The fact that Vice President Awori became personally involved in determining who the government would back in the race is an indicator of the importance the political class gives to this contest. Magarini voters are likely to be visited by many of the country's top political figures. Balmy Magarini in May 2007 will resemble in that respect frigid New Hampshire in February 2008.

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